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In re Application of :
Gaurav Mittal : DECISION ON PETITION
Application Number: 09/918394 :
Filing Date: 07/30/2001 :
Attorney Docket Number: :
042933/299294 :

This is a decision in reference to the petition filed under 37 CFR 1.137(a), on December 19, 2007, which, in view of petitioner's statement that the Office action was never received, is treated as a petition to withdraw the holding of abandonment.

The petition is **GRANTED**.

The application was held abandoned on March 1, 2007, for failure to timely file a response to the non-final Office action mailed on November 28, 2006, which set a three (3) month shortened statutory period for reply. Notice of Abandonment was mailed on June 29, 2007.

Petitioner asserts that the non-final Office action mailed on November 28, 2006, was never received because it was sent to an old correspondence address.

Specifically, petitioner asserts that a Revocation of Power of Attorney and New Power of Attorney by Assignee was filed on October 27, 2006, but never entered by the Office. Petitioner avers that the non-final Office action subsequently mailed on November 28, 2006, was sent to the old correspondence address. Petitioner states that the Notice of Abandonment was also mailed to the old correspondence address.

In the absence of any irregularity in the mailing of the non-final Office action, there is a strong presumption that the non-final Office action was properly mailed to practitioner at the

address of record. This presumption may be overcome by a showing that the non-final Office action was not in fact received.

A review of the official file reveals that a power of attorney and change of correspondence address were filed on October 27, 2006, but that the power of attorney and change of correspondence address was not entered. Consequently, the non-final Office action was mailed to the old correspondence address.¹

As such, the showing of record is that the Office erred in mailing the non-final Office action mailed on November 28, 2006, to the previous address rather than the current correspondence address.

The petitioner has made a sufficient showing of nonreceipt of the non-final Office action mailed on November 28, 2006. As such, there is no abandonment in fact. The holding of abandonment is withdrawn, and the Notice of Abandonment is vacated.

As the present petition was not necessitated by an error on the part of petitioner, no fee is due. The petition fee will be credited to counsel's deposit account.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply.² The three (3)-month extension request filed on December 19, 2007, was submitted more than three (3) months after the end of the period for reply to the non-final Office action mailed on November 28, 2006, and therefore is unnecessary. The extension of time fee paid on December 19, 2007, will be refunded to counsel.

Receipt of the power of attorney and change of correspondence address is acknowledged. A Notice Regarding Change of Power of Attorney and a Notice of Acceptance of Power of Attorney will be mailed under separate cover.

Receipt of the amendment filed in response to the non-final Office action mailed on November 28, 2006, is acknowledged.

The application file is being referred to the Technology Center Art Unit 2618. As a reply to the non-final Office action mailed on November 28, 2006, has been filed with the subject petition, it is not necessary to remail the outstanding Office action.

¹ It is further noted that the Notice of Abandonment mailed on June 29, 2007, was returned to the Office as undeliverable.

² See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988).

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.

A handwritten signature in black ink, appearing to read "D Wood".

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions